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IN THE

Supreme Court of the United States

October Term, 1949

No. 111

GLEN H. TAYLOR,

Petitioner,

vs.

CITY OF BIRMINGHAM, ALABAMA.

BRIEF FOR THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE AS *AMICUS CURIAE* IN SUPPORT OF PETITION FOR CERTIORARI.

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TABLE OF CASES

	PAGE
Buchanan v. Warley, 245 U. S. 60	3
McLaurin v. Oklahoma, ... U. S. ....., 70 Sup. Ct. 851	3
Morgan v. Virginia, 328 U. S. 373	3
Nixon v. Condon, 286 U. S. 76 (1932)	2
Shelley v. Kraemer, 334 U. S. 1	3
Smith v. Allwright, 321 U. S. 649	2
Sweatt v. Painter, ... U. S. ....., 70 Sup. Ct. 848	3

Other Authority

Stern and Gressman, Supreme Court Practice 1950	3

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The National Association for the Advancement of Colored People files this brief as *amicus curiae*, consent to do so having been granted by counsel for petitioner and respondent. The National Association for the Advancement of Colored People is interested in the issue of state-enforced racial segregation here presented because racial segregation is a central problem in the field of race relations in which the Association has labored for more than forty years. During its long and intimate concern with problems of racial disharmony, the Association has fought segregation with every legitimate weapon at its command because racial separation not only frustrates the practice of democracy at home, but because it also—at great cost to

the nation—impairs the regard in which America is held abroad. It is filing this brief because it believes that the state-enforced separation, upon which the prosecution herein is based, should be struck down by this Court, and that the petition for certiorari should be granted.

The Association is of the opinion that the issues presented are adequately discussed in petitioner's brief. Herein it merely desires to state its concurrence in the arguments there presented, and to perhaps touch upon some new matter.

The facts are presented in petitioner's brief (pp. 3-6), and there is no need to repeat them here. They make it clear that petitioner's arrest was for the purpose of enforcing Section 369(b) of the 1944 Code of the City of Birmingham (see Appendix A). Any interpretation which founds the arrest and conviction upon grounds not including this statute is an attempt to substitute illusion for substance. This Court has demonstrated that where civil rights are involved it will characterize the facts itself and base its decision on the real issues. For example, in cases involving the rights of Negroes to vote in so-called "white primaries", despite the characterization of certain political parties as private clubs by state and inferior federal courts, this Court immediately went to the real issue (*Smith* v. *Allwright*, 321 U. S. 649; *Nixon* v. *Condon*, 286 U. S. 73 (1932)).

As *amicus curiae*, the Association urges that certiorari be granted for the reason that the decision of the state court below is in conflict with applicable decisions of this Court. A federal question of substance—the constitutionality of Section 369 of the 1944 Code of the City of Birmingham, which orders racial segregation—has been decided by the Supreme Court of the State of Alabama despite its disavowals of this fact. This question has been decided

in a way not to avoid with applicable decisions of this Court—which have consistently struck down racial segregation and discrimination. These cases, be they concerned with transportation (*Morgan v. Virginia*, 328 U. S. 373), education (*Sweatt v. Painter*, ___ U. S. ___, 70 Sup. Ct. 848; *McLaurin v. Oklahoma*, ___ U. S. ___, 70 Sup. Ct. 851), voting (*Smith v. Allwright*, *supra*; *Terry v. Adams*, *supra*), zoning (*Buchanan v. Warley*, 245 U. S. 60), or restrictive covenants (*Shelley v. Kraemer*, 334 U. S. 1), have asserted and demonstrated that state-enforced racial segregation is repugnant to the Constitution. Therefore, the action of the State of Alabama in upholding racial segregation in the face of this Court's uniform disapproval thereof is in conflict with applicable decisions of this Court.

It may be argued that the conflict is merely one of principle and not a real conflict in the application of the rules of law. (See Stern and Gressman, Supreme Court Practice (1950), p. 199.) *Amicus curiae* urges that this is not the case. Segregation is essentially the same wherever practiced. By one means or another the Court has given it essentially the same treatment whenever the question has been presented. The decision of the Supreme Court of Alabama upholds state-enforced segregation—the decisions all cited above struck down segregation.

However, if the Court is of the opinion that a conflict of decisions concerning segregation in public assembly is the conflict required to grant certiorari in this case, then another reason presents itself for which certiorari should be granted. There are no decisions in this Court of which *amicus curiae* knows dealing with this specific matter. In a matter of such transcendent importance, a declaration of the law as to state-enforced segregation in public assembly would be of utmost importance. The importance and need for such a declaration need not be set forth in detail. The

Court is fully aware of them—it has demonstrated this awareness by its consideration of case after case dealing with the race relations problem.

Respectfully submitted,

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CONSTANCE BAKER MOTLEY,
JACK GREENBERG,
Attorneys for National Association for the Advancement of Colored People.

APPENDIX A
General City Code of Birmingham

Segregation Ordinance

SECTION 369. SEPARATION OF RACES.

(a) It shall be unlawful for any person in charge or control of any room, hall, theatre, picture house, auditorium, yard, court, ball park, public park, or other indoor or outdoor place, to which both white persons and Negroes are admitted, to cause, permit or allow therein or thereon any theatrical performance, picture exhibition, speech, or educational or entertainment program of any kind whatsoever, unless such room, hall, theatre, picture house, auditorium, yard, court, ball park, or other place, has entrances, exits and seating or standing sections set aside for and assigned to the use of white persons, and other entrances, exits and seating or standing sections set aside for and assigned to the use of Negroes, and unless the entrances, exits and seating or standing sections set aside for and assigned to the use of white persons are distinctly separated from those set aside for and assigned to the use of Negroes, by well defined physical barriers, and unless the members of each race are effectively restricted and confined to the sections set aside for and assigned to the use of such race.

(b) It shall be unlawful for any member of one race to use or occupy any entrance, exit or seating or standing section set aside for and assigned to the use of members of the other race.

(c) It shall be unlawful for any person to conduct, participate in or engage in any theatrical performance, picture

exhibition, speech, or educational or entertainment program of any kind whatsoever, in any room, hall, theatre, picture house, auditorium, yard, court, ball park, public park, or other indoor or outdoor place, knowing that any provision of the two preceding subdivisions has not been complied with.

(d) The chief of police and members of the police department shall have the right, and it shall be their duty, to disperse any gathering or assemblage in violation of this section, and to arrest any person guilty of violating the same.